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Due Date: December 17, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Samir F. Bassily	Examiner:	Hoanganh T. Le
Serial No.:	10/796,481	Group Art Unit:	2821
Filed:	March 9, 2001	Docket:	PD-01-439
Title:	SYTEM AND METHOD FOR PREFERENTIALLY CONTROLLING GRATING LOBES OF DIRECT RADIATING ARRAYS		

CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 CFR 1.8

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By: Victor G. Cooper
Name: Victor G. Cooper

PRE-APPEAL BRIEF REQUEST FOR REVIEW ARGUMENTS**MAIL STOP AF**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Final Office Action dated October 17, 2005, Applicant hereby submits a Notice of Appeal accompanied by a Pre-Appeal Brief Request for Review. The claims have not been amended.

Applicant requests this review based on:

- (1) The Final Office Action's erroneous contention that the Applicant's claims recite an intended use for the invention and not structural differences.
- (2) The Final Office Action's failure to substantively address the arguments presented in the Applicant's Amendment filed September 6, 2005.

The Applicant filed an Amendment under 37 C.F.R. § 1.111 on September 6, 2005, pointing out the patentability of the Applicant's claims over the references of record. The Final Office Action did not respond substantively to these arguments, but instead argued that the Applicant's claims recited only an intended use:

“... a recitation of an intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, than it meets the claim.

Since Fraser does show the claimed structure, including the plurality of elements comprising: a first row of elements extending in a first direction, and a second row of elements, parallel to the first row of elements, the second row of elements offset from the first row of elements by a stagger distance S, each element of the first row of elements spaced apart from an adjacent element in the first row of elements by a distance V (figure 2) the 102 (b) rejection is proper.”

The Applicant seeks pre-appeal review for three reasons.

First, claim 1 does not recite an “intended use.” It recites a structural difference between the applicants invention (the asymmetric nature of the grating lobe displacement about the DRA main lobe) and the prior art.

Second, even if the recitation “wherein each of the grating lobes in the set of grating lobes is angularly displaced from the main lobe by a grating lobe angle that varies asymmetrically about the DRA main lobe” *were* a recitation of an intended use, the claim would be allowable, since the prior art structure *is not capable* of generating grating lobes that are “angularly displaced from the main lobe by a grating lobe angle that varies asymmetrically about the DRA main lobe”.

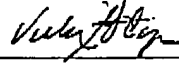
Third, whatever the merits or demerits of the “intended use” argument with respect to claim 1, it can have no application to claims 2-20, as those claims are replete with structural features.

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicant's undersigned attorney.

Respectfully submitted,

GATES & COOPER LLP
Attorneys for Applicant(s)

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By: 

Date: December 16, 2005

Name: Victor G. Cooper
Reg. No.: 39,641

Enclosures


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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) PD-01-439	
I hereby certify that this correspondence is being filed via facsimile transmission to the U.S. Patent and Trademark Office under 37 CFR 1.8 on <u>December 16, 2005</u> Signature _____ Typed or printed name <u>Victor G. Cooper</u>		Application Number 10/796,481	Filed 03/09/2001
		First Named Inventor Samir F. Bassily	
		Art Unit 2821	Examiner Hoanganh T. Le
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. 39,641 Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		 Signature <u>Victor G. Cooper</u> Typed or printed name (310) 641-8797 Telephone number December 16, 2005 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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